IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 210 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 Yes
3 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FERTILIZERS CO.

Appearance:
NR BB NAIK with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 10/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following questions to this Court, for our opinion, under sec. 256(1) of the Income-tax Act, 1961, arising out of

the order of the Tribunal dated 7.4.1982.

Assessment Years 1972-73 to 1974-75

"1. Whether, on the facts and in the circumstances of the case, the assessee was entitled to depreciation and the development rebate on roads, culverts, fencing etc. at the same rate applicable to plant & machinery?

2. Whether, on the facts and in the circumstances of the case, the assessee was entitled to development rebate on the enhanced cost of plant & machinery due to foreign exchange fluctuation?

3. Whether, on the facts and in the circumstances of the case, the assessee was entitled to deduction in respect of expenditure incurred in providing tea, coffee, etc. to its staff and customers?"

Assessment Year 1975-76

"4. Whether, on the facts and in the circumstances of the case, the value of work-in-progress and the value of the plant and machinery not installed should be included in the computation of "Capital Employed" for granting deduction u/s 80J of the I.T. Act, 1961?"

2. We have heard the Learned Counsel appearing for the Revenue, whereas, none appeared for and on behalf of the respondent-assessee, though duly served.

3. The assessee is a semi-Government institution, engaged in the manufacture of fertilizers and it is a public limited company.

4. At the time of hearing, our attention was invited to the decision of this Court in CIT v. G.S.F.C. Ltd., 219 ITR 550, in connection with the interpretation of the provisions of sections 33 and 43 of the I.T. Act, insofar as question No. 1 and question No. 4 are concerned. It has been, clearly, laid down in the said decision about the difference between building and plant and has also held that roads, culverts and compound walls do not constitute 'plant'. Therefore, the assessee is not entitled to the development rebate. It is further held in the said decision that in computing the capital employed for the purpose of relief u/s 80J, the amount representing machinery acquired during the previous year and even if not installed, or installed later on, must be taken into consideration. In view of the fact that our

decision referred to hereinabove concludes question Nos. 1 and 4, and we find ourselves in complete agreement with the ratio propounded therein, and whereas, both the questions are directly covered, we need not divulge upon other aspects of facts, or law, in extenso. With the result, Question No. 1, as aforesaid, is answered in negative, in favour of the Revenue and against the assessee, whereas, Question No. 4 is answered affirmatively, against the Revenue and in favour of the assessee.

5. In so far as Question No. 2, as aforesaid, is concerned, again our attention is drawn to the decision of this Court in CIT v. Rohit Mills Ltd, 210 ITR 228. It has been clearly laid down that additional payment made in terms of rupee, on account of difference in the exchange rate between the time when the liability was incurred, and when the liability was discharged, for the purpose of purchasing an asset from outside the country, the price, whereof, was payable in foreign currency, becomes part of the cost of acquisition of the asset acquired by the assessee, and therefore, it is not a revenue expenditure. The point desired to be answered in Question No.2 is, squarely, covered by our earlier decision and we find no any other reason why we should make a departure, since we are in agreement with the proposition propounded in the said decision. Question No. 2 stands concluded in the light of the aforesaid decision in Rohit Mills Ltd. (supra). We answer Question No. 2 in affirmative, against the Revenue and in favour of the assessee, without undergoing avoidable exercise of minute narration of facts and relevant proposition of law, which stands concluded.

6. Whereas Question No.3, as aforesaid, is referable to the interpretation and application of the provisions of sec. 37(2)(b), as it then stood, prior to 1.4.1976, is also directly covered by the decision of this Court, which came to be confirmed by the Hon'ble Apex Court in CIT v. Patel Bros. & Co. Ltd., 215 ITR 165. It is not in dispute that the assessment years in question are prior to 1.4.1976 and, therefore, the law propounded by the Hon'ble Supreme Court directly covers the issue raised in Question No. 3, for our answer. With the result, we answer Question No.3 in affirmative, against the Revenue and in favour of the assessee.

7. In our aforesaid view, this reference stands disposed of accordingly without any order of costs.

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